

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TIMOTHY ECKERT,

Plaintiff,

v.

DECISION AND ORDER

FORD MOTOR COMPANY, et al.,

04-CV-538S

Defendants.

1. On October 30, 2006, Magistrate Judge H. Kenneth Schroeder, Jr. issued a Report, Recommendation and Order recommending that the Court exercise its discretion, pursuant to Fed. R. Civ. P. 41(b), to dismiss this action for failure to comply with a court order and failure to prosecute. (Docket No. 141.)

2. The Report and Recommendation relates to the Ford Motor Company Defendants' Motion to Compel. (Docket No. 136.) Therein, the Ford Defendants sought Plaintiff's compliance with Judge Schroeder's June 8, 2006 Decision and Order, or, alternatively, dismissal of the Complaint in its entirety. The Court's June 8, 2006 Decision and Order had directed Plaintiff to respond to certain discovery requests no later than June 30, 2006, and warned that his failure to comply could result in sanctions, including dismissal of his Complaint.

3. On November 8, 2006, Plaintiff moved for an extension of time in which to file objections to the Report and Recommendation. (Docket No. 142.)

4. Notwithstanding the foregoing motion, on November 8, 2006, Plaintiff also filed Objections to the Report and Recommendation. (Docket No. 143.) Therein, Plaintiff

concedes that defense counsel had immediately notified him of Judge Schroeder's June 8, 2006 Decision and Order, but claims that his copy of the Decision and Order was received by another person residing where he was then temporarily living and that he did not actually locate the document until November 8, 2006. Plaintiff now states his intent to comply with discovery as directed by Judge Schroeder no later than November 24, 2006.

5. Judge Schroeder's Recommendation was based, in part, on Plaintiff's failure to file a response to the Ford Defendants' September 19, 2006 Motion to Compel. While Plaintiff acknowledges receipt of Judge Schroeder's September 20, 2006 Order staying the Amended Case Management Order pending resolution of the Ford Defendants' motion, he claims not to have received the September 20, 2006 Order directing him to file his response to that motion by October 13, 2006.

6. Plaintiffs explanations suggest that he has failed to affirmatively act to obtain documents he knew existed or has been inattentive to those he did receive. Nevertheless, Plaintiff has now stated his intent to comply and will be afforded a limited opportunity to do so. Plaintiff is forewarned that his failure to comply with the deadlines set forth below may result in the dismissal of his Complaint as against the Ford Defendants.

IT HEREBY IS ORDERED that the Ford Defendants' Motion to Compel Compliance with Discovery, or alternatively, for dismissal of the Complaint (Docket No. 136), is referred to Magistrate Judge Schroeder pursuant to 28 U.S.C. § 636(b)(1)(B) *nunc pro tunc* to September 19, 2006;

FURTHER, that Plaintiff is directed to comply with Judge Schroeder's June 8, 2006 Decision and Order on or before November 24, 2006;

FURTHER, that the Ford Defendants' Response to Plaintiff's Objections to the

Report and Recommendation, if any, shall be filed on or before December 5, 2006;
FURTHER, that Plaintiff shall file his reply on or before December 15, 2006; and
FURTHER, that Plaintiff's Motion for an Extension of Time to File further Objections
(Docket No. 142) is DENIED.

SO ORDERED.

Dated: _____ November _15, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge